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IN THE

Supreme Court of the United States

October Term, 1957

No. 746

MARION B. GIDEON,

Respondent,

vs.

GEORGE D. GIDEON,

Petitioner.

Petition for a Writ of Certiorari to the District Court of Appeal of the State of California.

GEORGE D. GIDEON,
7706 Fair Avenue,
Sun Valley, California,
In Propria Persona.

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Petition for a Writ of Certiorari to the District Court of Appeal of the State of California.

To the Honorable Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States of America:

Your petitioner, George D. Gideon, prays that a Writ of Certiorari issue to review the decision of the District Court of Appeal of the State of California, Second Appellate District, Division One, entered in the above-entitled case on September 3, 1957.

Citations to Opinions Below.

In the above-entitled action there were five appeals from orders of the trial court, the Superior Court of the State of California. These five appeals were consolidated and were heard together by the District Court of Appeal of the State of California, whose decision embraces all five appeals.

The judgment and orders of the trial court are unreported and are included in the Certified Record. The decision of the state District Court of Appeal, is printed in Appendix B, hereto, and is reported in 153 A. C. A. 593, 314 P. 2d 1011.

Jurisdiction.

The decision of the District Court of Appeal of the State of California was entered on September 3, 1957 [Cert. Rec. p. ....; Appx. B, *infra*]. Petition for Rehearing was denied on September 25, 1957 [Cert. Rec. p. ....]. Petition for Hearing, After Decision of the District Court of Appeal, was denied by the Supreme Court of the State of California on October 30, 1957 [Cert. Rec. p. ....]. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3) (since a right to due process of law is claimed under the Fourteenth Amendment of the Constitution of the United States).

Questions Presented for Review.

1. Whether there is conflict between the decision of the State Court below and the prior decision of the United States Supreme Court in *United States v. Throckmorton*, 98 U. S. 61, on the issues of "intrinsic fraud," where a litigant raises these issues in all the proceedings of the state trial court and on direct appeal to the state appellate court and introduces evidence thereon, and the state courts make no finding on these issues, and rule they are not in issue.

2. Whether a litigant has been deprived of his property without due process of law and in contravention of his rights under the Fourteenth Amendment of the Constitution of the United States, where he raises the issues of "intrinsic fraud" in all the proceedings of the state

trial court and on direct appeal to the state appellate court and introduces evidence thereon, and the state courts make no finding on these issues.

3. Whether a litigant has been deprived of his property without due process of law and in contravention of his rights under the Fourteenth Amendment of the Constitution of the United States, where a state appellate court attempts to cure a defective judgment, lacking in a material finding, by ruling that there is an "implied" finding; where such implied finding does not necessarily or reasonably follow from the other findings, where such implied finding is not expressed, and where there is no evidence to support such a finding adverse to the litigant but on the contrary there is evidence to support a finding in his favor.

Constitutional Provision Involved.

The constitutional provision here involved is Section 1 of the Fourteenth Amendment of the Constitution of the United States of America. This is printed in Appendix A hereto.

Statement of the Case.

This case is nominally only a small dispute between husband and wife in a divorce action, and as such is probably not of sufficient importance to intrude upon the time of the United States Supreme Court. However, there arose in this case the issues of perjury and intrinsic fraud and the conduct of the courts and attorneys in dealing with these issues; and it is felt that these subjects, applicable to every state and federal court proceeding wherein an attempt is made to impede the attainment of an equitable and just determination, are of extreme importance.

The Facts.

On November 13, 1953, plaintiff wife filed suit for divorce against the defendant husband, charging cruelty and asking for alimony, support, attorney fees, and the home of the parties [21756 Clk. Tr. p. 1].* The husband's Answer to the Complaint alleged that such incidents as had occurred had been provoked by the wife [21756 Clk. Tr. p. 6]. Under California law, provocation is a valid defense against so-called "cruelty" (*DeBurgh v. DeBurgh*, 39 Cal. 2d 858), and there were mature reasons for resisting the divorce action, reasons which are not pertinent to the legal questions herein.

Judgment on the first trial of the action was set aside [21756 Clk. Tr. p. 53].

Judgment on the second trial was entered October 7, 1955, in favor of the plaintiff wife, but contained no finding on the issues of fraud and perjury [22217 Clk. Tr. pp. 9-24].

During the said second trial the defendant husband charged that the plaintiff and her attorneys were wilfully introducing false testimony and that their entire case was perjured [22217 Rep. Tr. p. 227]. Plaintiff and her attorneys made no denial of these charges. The trial judge, himself, admitted that it was obvious that someone was not testifying truthfully [22217 Rep. Tr. p. 277], but ruled to strike out the charges at the conclusion of testimony [22217 Rep. Tr. p. 276] and ruled that these charges were not in issue [22217 Rep. Tr. p 277] although he ad-

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*The Record certified to the United State Supreme Court includes eleven transcripts in the proceedings before the State Court of Appeal. These transcripts are each individually paginated starting with page 1 for each transcript. To differentiate these transcripts in the above references, the State Court of Appeal number for the transcript is prefixed to the reference.

mitted in evidence the affidavits of the children of the parties in support of the husband's charge that the wife's attorney had suborned perjury on the part of her client and other witnesses [22217 Rep. Tr. p. 245; 21756 Clk. Tr. pp. 44 and 46].

Also before the trial court and in evidence were affidavits and testimony showing that the wife's attorney had brought about the separation of the parties, herself, by means of an *ex parte* court order based on affidavits which stated that the parties had already separated and that the children were in the wife's custody [21756 Clk. Tr. pp. 2, 29]. At the trial the wife admitted that these statements were untrue and that there had been no separation [22217 Rep. Tr. p. 61].

Following the entry of the Interlocutory Judgment of Divorce (which in California has the effect of a final judgment for purposes of appeal, the entry of the nominal final judgment after the lapse of one year being only a ministerial act) there were four other proceedings in the action, dealing with additional attorney fees (Dist. Ct. App. Nos. 21948, 22060, 22468 and 22340).

In each of these proceedings the husband raised the issues of fraud and perjury in his answering affidavit [21948 Clk. Tr. p. 5; 22060 Clk. Tr. p. 18; 22468 Clk. Tr. p. 9] and in each proceeding the trial court ruled that the questions were not in issue and that it would not permit evidence on these issues [21948 Rep. Tr. pp. 7, 8; 22060 Rep. Tr. pp. 66, 67; 22468 Rep. Tr. pp. 14, 15, 17, 18] and in each proceeding the trial court made written findings but did not make any finding on the issues of fraud and perjury [21948 Clk. Tr. p. 13; 22060 Clk. Tr. p. 14; 22468 Clk. Tr. p. 7].

On appeal, the husband made only one point, which was the same on each of the five consolidated appeals, viz.: that in failing to consider and make a finding on the issues of fraud and perjury the trial court had not completely tried the case.

How Federal Question Is Presented.

The question of procedural due process arose when the trial court failed to make any finding on the issues of intrinsic fraud. It could not, of course, be presented to the trial court in the proceedings prior to the findings; in this respect the case herein can be distinguished from the case of *Edelman v. California*, 344 U. S. 357, in which the petitioner was convicted under a vagrancy statute, the constitutionality of which could have been put in issue in the trial court.

Your petitioner based his entire argument on direct appeal on questions of due process and the validity of a judgment lacking in an essential finding. Specific reference was made to the Fourteenth Amendment of the United States Constitution in his briefs on appeal [22217, 21948, 22060, 22468, 22340, App. Rep. Brs.; Cert. Rec. hereto] in which he stated:

> "It is further submitted that in view of the undenied and uncontradicted facts showing fraud on the part of the plaintiff and her attorneys, the rulings of the trial court in this action have resulted in a denial of appellant's rights as guaranteed under the Constitution of the State of California and under the fourteenth amendment of the Constitution of the United States."

These briefs represented your petitioner's first opportunity to present the question to the courts below, and they are

nominally before both the State District Courts of Appeal and the State Supreme Court.

The opinion below (Appx. B hereto) does not decide the federal question nor mention it. A Petition for Rehearing before the District Court of Appeal below was summarily denied. A Petition for Hearing before the California Supreme Court was also summarily denied [Oct. 30, 1957; Cert. Rec.].

Reasons for Granting the Writ.

1. The decision and rulings of the California courts in this case appear to be in conflict with the decision of this court in *United States v. Throckmorton*, 98 U. S. 61. The trial court below ruled that the questions of fraud and perjury were not in issue and declined to allow evidence to be introduced thereon even though the husband had specifically raised these issues.

Then on appeal, even though the charges were not denied, and even though the husband was able to show seven instances of false testimony by the witnesses' own judicial statements and judicial admissions, the state District Court of Appeal ruled that it would cure the defect of a failure to find on these issues by "implying" a finding adverse to the said husband.

This appears to be contrary to the principle expressed by this court in the *Throckmorton* case, that a court of equity will not retry matter which has been actually tried before "or so in issue that it might have been tried," listing such things as "judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue."

Although the wording of the *Throckmorton* case does not state *in direct language* that the questions of intrinsic

fraud such as perjury are always so in issue that they might have been tried, this has been the universal interpretation of our federal and state courts, who have cited this decision as authority for refusing to consider questions of intrinsic fraud on collateral attack against a judgment.

2. Petitioner contends that the failure of the state courts to make any express finding on the issues of fraud and perjury has resulted in a judgment that deprives him of his liberty and his property without due process of law.

As this court stated in *Baltimore & Ohio Ry. Co. v. United States,* 298 U. S. 349:

> "The right under the due process clause to a full hearing includes the right to introduce evidence and have judicial findings based upon it."

And in *Postal Telegraph Cable Co. v. Newport:*

> "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings, and a state may not, consistently with the 14th Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard."

The petitioner submits that it is self evident that it is the duty of the courts to guard scrupulously against fraud and, where such issue is raised, to give every assistance and opportunity to the party who raises the issue to establish it if he can. The courts have a duty to every litigant, not to assist in the perpetration of a fraud either actively or passively.

3. The state appellate court below attempted to cure the defective findings by a ruling in its decision that:

> "The technical objection that the findings of fact do not cover the issues of fraud and perjury has no merit. For the finding of cruelty includes an implied finding as to these charges" [Cert. Rec.; also Appx. B, p. 6].

Such a ruling is not only contrary to existing California law (*Rossini v. St. Paul Insurance*, 182 Cal. 415; *Beason v. Griff*, 127 Cal. App. 2d 382; see App. Pet. for Reh. pp. 9-13), which requires that an implied finding must necessarily follow from the express findings and must be fully supported by the evidence in order to be valid, but is also in conflict with a prior decision of this Supreme Court, viz.:

Divorce actions were unknown at common law and therefore the state courts have only such power in divorce actions as has been given them by the State Legislature. But even a State Legislature may not make one fact *prima facie* evidence of another if the inference is unreasonable and arbitrary (*United States ex rel. St. Louis S. W. R. Co. v. Interstate Commerce Commission*, 264 U. S. 64), and a statute or judicial ruling creating a presumption that is arbitrary violates the due process clause of the Fourteenth Amendment of the United States Constitution (*Manley v. Georgia*, 279 U. S. 1; *Western & A. R. Co. v. Henderson*, 279 U. S. 639).

Your petitioner submits that a ruling is arbitrary where it states in effect that a finding of "cruelty" implies a finding that there was no "intrinsic fraud."

4. IMPORTANCE: It has already been established by the *Throckmorton* case that a court of equity will not consider questions of intrinsic fraud.

In this Gideon case, the trial courts have stated that they will not consider questions of intrinsic fraud, either, and have accordingly limited your petitioner in the introduction of evidence and have failed to make any finding on these questions.

It would appear then, that litigants in the State of California are totally precluded from proving intrinsic fraud at any time, whatsoever.

Your petitioner believes that this case constitutes a dangerous precedent, and that it should not be allowed to stand.

Conclusion.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

GEORGE D. GIDEON,

In Propria Persona.

Dated this 15th day of January, 1958.

APPENDIX "A."

United States Constitution, Fourteenth Amendment, Section 1.

United States Constitution, Fourteenth Amendment.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "B."

The Opinion of the District Court of Appeal of the State of California, Second Appellate District, Division One.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

Marion B. Gideon, Plaintiff and Respondent, vs. George D. Gideon 3rd, Defendant and Appellant. Civil Nos. 22217, 21948, 22060, 22468, 22340.

Filed Sept. 3, 1957.

Appeals from judgment and orders of the Superior Court of Los Angeles County, Victor R. Hansen, Elmer D. Doyle and Aubrey N. Irwin, Judges.

For Appellant: George D. Gideon, *in propria persona*.

For Respondent: Hahn, Ross & Saunders.

Plaintiff, Marion B. Gideon, and defendant, George D. Gideon III, are wife and husband. They were married at Ardmore in Pennsylvania, August 10, 1940. They have two children.

The wife brought this action for divorce in 1953. She charged extreme cruelty. Trial was had in 1954, with judgment for the wife.

The judge who tried the case died, and a motion for a new trial was granted by another judge.

The case was again tried in 1955, again resulting in judgment for the wife. Motion for a new trial in this case was denied.

The husband appeals from the judgment (the interlocutory decree of divorce).

He also appeals from four orders made after the judgment.

These five appeals have been combined for briefing, argument and decision by this court. What we say about the divorce case will also apply to the orders. Indeed,

when we get through with the divorce case there will be little left to say about the orders.

In the divorce case Mr. Gideon argues:

First, the weight, value, and effect of the evidence. This argument goes all through all of his briefs in all of the cases here under review.

Secondly, that there was fraud, perjury, and misconduct on the part of the wife and her attorneys, and that the findings on these issues are insufficient.

Thirdly, that the trial court should have considered reports of a lie-detector examiner, submitted in support of Mr. Gideon's affidavit for a new trial, and argued in all of his appeals.

Inasmuch as Mr. Gideon has argued and briefed his appeals to this court without the aid of a lawyer, we will comment upon some of his arguments somewhat more at length than we usually do.

Referring now to Mr. Gideon's first contention, as to the weight, value, and effect of the evidence.

He completely misunderstands the function of courts of review in California. These courts by constitutional mandate do not weigh conflicting evidence. The credit to be given to the testimony of any witness is solely for the trial tribunal. And this court has no power to disturb a finding of a trial judge if there is substantial evidence to support it. This rule applies to every type of trial, criminal and civil.

Mr. Gideon is not alone in making this mistake. Time and again, lawyers, and good ones too, counsel and undertake appeals, with only an argument as to the weight, value, and effect of the evidence to support them. And

courts of review are astounded at the waste of time and effort, and litigants' money, in such artless, hopeless appeals.

In a recent divorce case the Supreme Court of California concisely states the rule:

"When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." (Primm v. Primm, 46 Cal. 2d 690, 693; Grainger v. Antoyan, 48 A. C. 812, 814.)

So, having the rule in mind, let us look at the record in this case and see if there is *any* evidence, contradicted or uncontradicted, that supports the finding of cruelty, and the judgment of the superior court based upon that finding.

The wife testified that her husband struck and beat her many times during the marriage. In particular she said that in 1952 he struck her in the face with his fist, "so hard that it knocked me almost unconscious;" that he then dragged her into a bedroom and beat her unmercifully with a thick, heavy, leather belt; and that as a result of this beating her body was covered with bruises and welts.

Later in the trial, defendant himself admitted this sadistic treatment of his wife.

"I took her into the bedroom, and I removed my heavy leather belt, which has been described here already, and I beat her over the back and the buttocks, and I beat her over the legs and she cried, 'George, don't kill me; think of your children.'"

To excuse this conduct Mr. Gideon accused his wife of misconduct. But the trial judge found against him as to that, and, under the substantial evidence rule, that finding is also binding upon this court.

It is true that there is a legal rule sometimes called the doctrine of provocation in divorce cases. Our Supreme Court has held that cruelty that is provoked does not give rise to a cause of action for divorce. (De Burgh v. De Burgh, 39 Cal. 2d 858, 862.) But Mrs. Gideon testified that she was never untrue to her husband; the man Mr. Gideon suspected denied the charges; and all Mr. Gideon had to argue about was an admission made by his wife when he was beating her, and which she testified was untrue and was extorted from her in fear of her life.

This conduct of Mr. Gideon was the worst kind of cruelty. Standing alone, it supports the trial judge's finding of cruelty. Standing alone, it refutes Mr. Gideon's labored arguments of fraud and perjury. And this court could well stop right here, and affirm the judgment of divorce and all of the orders subsequent thereto.

The most kindly thing that can be said of Mr. Gideon is that he must have a troubled mind. No man of normal mentality would beat and torture his wife as Mr. Gideon admittedly did. And this court sincerely hopes that in his efforts to besmirch the character and reputation of the mother of his children, so painfully apparent all through these cases, that he has not failed to provide his children with the support that any decent father as a matter of natural law owes to them.

However, in view of the seriousness of Mr. Gideon's repeated charges of fraud, perjury, and subornation of

These charges are stated by Mr. Gideon in his brief on his appeal from the orders, as follows:

"The key point raised by defendant in all these proceedings and appeals is that respondent and her attorneys have presented a fraudulent and perjured case and are not deserving of any support or assistance from the courts, that this fraud and perjury were instigated by respondent's attorneys, that this fraud and perjury have been directed and guided in the various proceedings by respondent's attorneys, and that it is the duty of the courts to protect and aid the parties and their children against this perfidy and not to sanction or assist such monstrous conduct."

There is no evidence in the reporter's transcript of the proceedings in the divorce trial that will support any of these charges. Offered testimony of Mrs. Gideon's asserted admissions before the Childrens' Court of Conciliation and before a judge of the superior court, even if admissible in evidence (see, Code Civ. Proc., sect. 1747), would not prove the fraud and perjury that Mr. Gideon charges.

On this trial he testified that one of Mrs. Gideon's lawyers suborned perjury, "that the whole case for the plaintiff is based on perjury. . . . and I have got all this backed up by my lie detector tests."

These statements were conclusions only, prove nothing, and, as will later appear in this opinion, the lie-detector tests are worthless.

On the motion for a new trial in the divorce case, Mr. Gideon filed an affidavit in which he made the same charges, supported in the same way. It is to be presumed

that the trial judge gave this affidavit the weight that he thought it deserved when he denied the motion for a new trial.

It has been difficult to state any real charges of fraud or perjury from Mr. Gideon's presentation of his case. For throughout his briefs he labels as "perjury" any testimony contrary to his own, or contrary to his theory of the case. All such statements are based on conflicts in testimony. That testimony could be perjury all right; but the trial judge found otherwise, and under the substantial evidence rule this court must label it truthful.

The technical objection that the findings of fact do not cover the issues of fraud and perjury has no merit. For the finding of cruelty includes an implied finding as to these charges.

Every intendment is in favor of a finding of cruelty in a divorce case. Such a finding is not to be overthrown unless it is very plain to an appellate tribunal that the conclusion reached cannot be supported by any rational view of the testimony. (Polk v. Polk, 50 Cal. App. 2d 653, 656.)

Finally with reference to Mr. Gideon's contention that lie-detector tests support his statements that there was fraud and perjury. In his arguments to this court he says that there was fraud and perjury, and in his affidavit he avers that there was. Then he argues that when he submitted these statements and averments to a lie-detector expert, the expert said they were true.

This is, of course, unstable and illogical reasoning.

Lie-detector tests have no place in California law.

In People v. Carter, 48 A. C. 754, at page 769, our Supreme Court says: "Lie detector tests do not as yet have enough reliability to justify the admission of expert testimony based on their results." See, also, People v. Porter, 136 Cal. App. 2d 461.

In the opinion of this court, use of lie detectors would add a dangerous refinement to our trial practice. For then each witness in a case could go to a lie-detector expert and repeat his testimony. Then the expert could testify that that witness' testimony was true when tested by the lie detector. And then the judge or jury charged with finding the truth could be confounded by as many lie-detector opinions as to whether or not witnesses who gave conflicting testimony told the truth as there were conflicts. One of the primary functions of our trial courts, to find and declare the truth, would then be like flotsam caught in a whirling eddy, go round and round and get nowhere.

The judgment (the interlocutory decree of divorce) will be affirmed.

Now we will take up the appeals from the four orders.

As stated, Mr. Gideon makes the same assertions of fraud and perjury and the same argument as to lie-detector tests of his assertions in each of these appeals. These matters have already been fully discussed in this opinion, and nothing more need be said about them.

Appeal No. 21948. This was an order made November 25, 1955, that Mr. Gideon furnish his wife with a copy of the reporter's and clerk's transcript for his appeal in the divorce case, with $100.00 costs to her lawyer for printing her brief, and $150.00 for services of her lawyer, payable at the rate of $40.00 per month.

This order was within the discretion of the trial judge, and will be affirmed.

Appeal No. 22,060. This is an appeal from an order dated January 25, 1956. Only two of the several matters in this order need consideration: (1) A modification of the custodial order in the divorce case, and (2) an order for attorney's fees and costs.

The order as to custody is not sufficiently specific to be enforced, and will be reversed, without prejudice to the custodial order in the judgment of divorce, or any modification thereof that may hereafter be made. In all other respects the order will be affirmed.

Appeal No. 22,340 This is an appeal from two orders for execution and from an order denying defendant's motion to quash the executions, and denying his claims of exemption of his earnings attached by the sheriff.

No abuse of discretion appears in the making of any of these orders, and all of them will be affirmed.

Appeal No. 22,468. This is an appeal from an order dated March 22, 1956, directing defendant to pay plaintiff attorney's fees of $50.00 in this particular appeal.

This order also will be affirmed.

The judgment (the interlocutory decree of divorce) is affirmed.

The order in Appeal No. 21948 is affirmed.

The order in Appeal No. 22060 is affirmed, except that part of it that has to do with custody, which is reversed, without prejudice to the custodial order in the judgment of divorce, or any modification thereof that may hereafter be made.

The orders in Appeal No. 22,340 are, and each of them is, affirmed.

The order in Appeal No. 22,468 is affirmed.

DRAPEAU, *J.*, *pro tem.*

We concur:

WHITE, *P. J.*

FOURT, *J.*